

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2495 of 2024**

Arising Out of PS. Case No.-36 Year-2021 Thana- SABAUR District- Bhagalpur

Ranjeet Kumar Singh, S/o Madan Prasad Singh, R/o Village-Murhan, P.S.
Gouradih, Distt-Bhagalpur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Ranjan Kumar Jha, Advocate

For the Respondent/s : Mr. Ramchandra Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 17-10-2024

At the outset, it is important to mention that this appeal was taken on board under the caption **"For Orders"** where initially prayer of bail and suspension of sentence under Section 389(1) of the Cr.P.C. was raised by learned counsel appearing on behalf of the appellant but, after short argument, it is submitted that he is ready for final hearing of the appeal, which was not objected by learned APP and, therefore, this appeal is being finally heard under aforesaid caption.

2. This appeal has been preferred by the



appellant/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 02.05.2024 and order of sentence dated 04.05.2024 passed by learned Special Judge, Excise-2, Bhagalpur in Special Excise No.177 of 2021 arising out of Sabour (Gouradih) P.S. Case No.36 of 2021, whereby the concerned Trial Court has convicted the appellant/convict for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'Excise Act') and sentenced to undergo rigorous imprisonment for five years with fine of Rs.1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

3. Brief case of prosecution as per written report of informant/PW-1, namely Arun Kumar Singh, A.S.I., given to the S.H.O. Gouradih Police Station alleging therein that on 27.01.2021 at 21.30 hours, he along with police party has proceeded for night patrolling and at 21.35 hours, when he was at Virnoudh Chowk, he got a secret information that at village-Murhan, Ranjeet Kumar Singh (appellant) is selling



foreign liquor in his kirana shop. On this information, the informant reached at kirana shop of Ranjeet Kumar Singh at village-Murhan and found one person sitting in kirana shop. Till then, some villagers assembled there and in presence of two witnesses, on inquiry, the person sitting there disclosed his name as Ranjeet Kumar Singh (appellant). Then, search was started. During search, 11 bottles, containing 375 ml each of Imperial Blue foreign liquor total quantity of 4.125 liters kept behind the counter in white colour plastic bag was recovered. On further enquiry, he did not give satisfactory reply nor produced any documents. Thereafter, seizure list was prepared and the accused was arrested.

4. On the basis of aforesaid written report of the informant, a formal FIR, being Sabour (Gouradih) P.S. Case No.36 of 2021 was registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 against the appellant.

5. After completion of investigation and on the basis of materials collected thereof, the Investigating Officer of this case submitted charge-sheet No.107 of 2021 dated 07.10.2021 for the offence punishable under Section 30(a)



of the Bihar Prohibition and Excise Act, 2016 against the appellant.

6. Learned Special Court/trial court took cognizance of the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 against the appellant on 20.12.2021 and after supplying the police papers under Section 207 of the Code, framed charge under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 against the appellant on 09.06.2022, which was explained to the appellant/convict to which, he pleaded not guilty and claimed to be tried.

7. To substantiate its case, the prosecution has examined altogether seven prosecution witnesses. They are:-

(i) PW-1 Arun Kumar (Informant) (X); (ii) PW-2 Sanket Kumar; (iii) PW-3 Vijay Kumar Rai (Investigating Officer of this case); **(iv) PW-4 Rajiv Paswan; (v) PW-5 Hari Kishore Singh** (seizure list witness); **(vi) PW-6 Ajay Kumar Singh** (seizure list witness); and **(vii) PW-7 Sunil Kumar.**

8. Apart from the oral evidence, the prosecution



has also relied upon following exhibits/documentary evidences, which are:-

Sl. No.	List of Exhibits/documents	Name of documents
1.	Exhibit P-1	Signature of witness Hari Kishore Singh and Ajay Kumar Singh and accused on search-cum-seizure list.
2.	Exhibit P-2	Written application of informant Arun Kumar Singh, A.S.I.
3.	Exhibit P-3	Signature of S.I. Ashutosh Kumar Singh on forwarding.
4.	Exhibit P-4	Signature of Basant Yadav of pagination on written application.
5.	Exhibit P-5	Formal FIR.
6.	Exhibit P-6	Signature of two independent witnesses on arrest memo.
7.	Exhibit P-7	Charge-sheet.
8.	Exhibit P-8	Forwarding report.
9.	Exhibit P-9	Signature of medical officer on medical report.
10.	Exhibit P-10	Check list.
11.	Exhibit P-11	Liquor examination report.
12.	Exhibit P-12	Nazari map of Circle Officer.
13.	Exhibit P-13	Signature of witness Hari Kishore Singh on search-cum-Seizure report.
14.	Exhibit P-14	Signature of witness Ajay Kumar on search-cum-Seizure report.
15.	Exhibit P-15	Destroy certificate.



9. On the basis of evidences/circumstances as surfaced during the trial, the learned trial court has examined the appellant/accused under Section 313 of the Code, where he completely denied the evidence surfaced during the trial and claimed his complete innocence.

10. No witness was examined on behalf of the appellant in defence.

11. Taking note of the evidence as surfaced during the trial and after considering the arguments as advanced by both the parties, the learned Trial Court has convicted the appellant/convict/accused for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

12. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant/convict has preferred the present appeal.

13. Hence, the present appeal.

Argument on behalf of the appellant/convict:

14. It is submitted by learned counsel appearing for appellant/convict that the recovery of illicit liquor of



4.125 liters was not proved during the trial, as both seizure list witnesses did not supported the recovery and, therefore, the conviction as recorded by learned trial court for the recovery of alleged illicit liquor is completely perverse and same is fit to be quashed and set aside. It is pointed out that even during the trial, the seized illicit liquor was not produced before the court.

14.1. While concluding argument, it is submitted that the recovery was made from grocery shop of appellant, where nothing surfaced during the trial that the mandatory provisions regarding search of premises as available under Section 100(4) of the Code was followed and, therefore on this score also, the judgment of conviction appears questionable.

Argument on behalf of the State-respondent:-

15. Learned APP while opposing the appeal submitted that the seizure list witnesses have supported seizure list and upon their support only, it was exhibited as Exhibit-P-13 and P-14, but he fairly conceded that seizure list witnesses have disputed the recovery of illicit liquor from



the possession of this appellant.

16. **PW-1 Arun Kumar Singh**, who is the informant of this case and was posted as A.S.I. Gouradih Police Station. He stated in his examination-in-chief that on 27.01.2021 during night patrolling, he received information from his S.H.O. that one person, namely, Ranjeet Kumar Singh (appellant) under the garb/impression of grocery shop is selling illicit liquor. Upon said information, he visited the grocery shop of appellant and in presence of two independent witnesses, namely, Hari Kishore Singh (PW-5) and Ajay Kumar Singh (PW-6) searched the entire shop and upon search, seized eleven sealed bottles of "Imperial Blue" each containing 375 ml. liquor, which was seized in accordance with law under signature of independent witnesses. He identified the signature of witnesses upon search-cum-seizure list, which upon his identification was exhibited as **Exhibit P-1**. He also identified his signature and upon his identification, same was also exhibited as **Exhibit P-2**. He also identified hand-writing of S.H.O., namely, Ashutosh Kumar regarding forwarding of



information as to lodge FIR, which upon his identification was exhibited as **Exhibit-P3**. He also identified the endorsement as to lodge the FIR, which upon his identification was exhibited as **Exhibit P-4**. The formal FIR and arrest memo were also identified by him and upon his identification, same was exhibited as **Exhibit P-5** and **Exhibit P-6** respectively.

16.1. Upon cross-examination, it was stated by him that he did not found any customer at the shop of appellant, which was opened at that point of time. It was stated that seizure list was prepared at spot itself. It was further stated that seized objectionable material is not available before him in court.

17. **PW-2** is **Sanket Kumar**, who is also the member of raiding team and supported the manner of recovery in the same manner as it was deposed by PW-1 and therefore, same is not required to be discussed again for the sake of brevity.

17.1. Upon cross-examination, it was stated by him that seized material was also not produced before him



during trial.

18. The same is also the position of PW-4, namely, Lalji Paswan and PW-7, namely, Sunil Kumar, who almost supported the recovery of illicit liquor in the same manner as it was deposed by informant/PW-1.

19. **PW-3 Vijay Kumar Rai** is the Investigating Officer of this case. It appears from his deposition that he received test report of illicit liquor, which was made available to him through Superintendent of Police, Bhagalpur.

19.1. Upon cross-examination, it was stated by him that he visited the place of recovery and also prepared the map of the shop. It was stated that the statement of seizure list witnesses was not recorded by him during the investigation. It was also stated by him that the appellant/convict was of clean antecedent. The seized material was not produced before him during trial.

20. **PW-5 Hari Kishore Singh** and **PW-6 Ajay Kumar Singh**, who are none but the seizure list witnesses. It appears from their deposition that they identified their signatures upon seizure list, which is related with present



case i.e. Sabour (Gouradih) P.S. Case No.36 of 2021 and upon his identification, same was exhibited as **Exhibit P-13** and **Exhibit P-14** respectively. It was stated by PW-5 that as per seizure list, 10-11 bottles of illicit liquor was recovered but, he categorically deposed in his examination-in-chief itself that he could not say that from where illicit liquor was recovered. Upon cross-examination, it was stated that illicit liquor was not before him. PW-6 also stated upon cross-examination that he can not say from where the illicit liquor was recovered. He has shown his complete ignorance about the recovery of liquor.

21. From the aforesaid re-appreciation of evidence, particularly from the deposition of PW-1/informant, it is apparent that illicit liquor was not produced during the trial. Moreover, the seizure list witnesses, who are PW-5 and PW-6 not declared hostile by the prosecution during trial who disputed the recovery of illicit liquor from the grocery shop of appellant/convict, makes the entire case of prosecution false on its face and having such evidences, it cannot be said that prosecution proved alleged recovery of



illicit liquor from the shop of appellant/convict. It also appears from the available depositions that prosecution failed to follow the procedure *qua* search of shop of the appellant in view of mandatory provisions as available under Section 100(4) of the Code.

22. In view of aforesaid available evidences, it can be said safely that several questions remains unanswered by prosecution during trial, which may prove recovery of liquor from possession of appellant, the benefit of which, must be extended to the appellant/convict.

23. Accordingly, the appeal stands allowed.

24. Hence, the impugned judgment of conviction dated 02.05.2024 and order of sentence dated 04.05.2024 passed by learned Special Judge-Excise-2, Bhagalpur in Special Excise No.177 of 2021 arising out of Sabour (Gouradih) P.S. Case No.36 of 2021, is hereby quashed and set aside. Resultantly, the appellant, Ranjeet Kumar Singh is acquitted from the aforesaid charges levelled against him. He is directed to be released forthwith, if not required in any other case. Fine, if any paid, be returned to appellant



immediately.

25. Office is directed to send back the trial court records along with a copy of the judgment to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19-10-2024
Transmission Date	19-10-2024

